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BACKGROUND PAPER 2

CANADIAN INTERGOVERNMENTAL AGREEMENTS ON IMMIGRATION

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BACKGROUND

In the late 1970s, Ottawa and many of the provinces signed letters of understanding or memorandums of agreement outlining their intent to better cooperate on the development and administration of immigration policy. While most of these agreements were brief and did little more than outline a vague commitment to cooperate, a notable exception was the 1978 *Cullen-Couture* agreement between the federal government and Quebec. The practical result of this special agreement was to greatly expand the role of Quebec in selecting a wide range of immigrants destined to that province. On February 5, 1991, the *Canada-Quebec Accord* was signed to replace the *Cullen-Couture* agreement. The new agreement would increase Quebec's role in immigration by, among other things, giving the province sole responsibility for designing and delivering settlement programs for new immigrants.

In 1994, Ottawa conducted a review of its role in immigration, and concluded that it may not always be appropriate to be involved in all aspects of the process. After a series of Canada-wide consultations with various provinces and interested stakeholders, a new round of intergovernmental agreements affecting immigration was negotiated.

As of March 2000, the federal government had signed agreements on immigration with six provinces: British Columbia, Saskatchewan, Manitoba, Quebec, New Brunswick, and Newfoundland. The negotiation of a set of comprehensive federal-provincial immigration agreements is a relatively new phenomenon. While Section 95 of the *Canadian Constitution* clearly states that immigration is a "shared" responsibility, and Section 108 of the *Immigration Act* allows the federal government to negotiate such agreements with the provinces, it is only recently that the provinces themselves have taken an increased interest in the area. Given this new development in the policy environment, there is substantial merit in considering the essentials of these agreements, how they differ, and finally, how they might impact on immigration policy in the future.

THREE AGREEMENT TYPES

All of the agreements are designed to provide a framework for federal-provincial cooperation and to ensure that each province receives an increased benefit from immigration. At the same time, however, the scope of the various immigration agreements does differ – they do not share all of the same specific purposes. A cursory glance shows that there are basically three types of agreements that can be distinguished based on the scope that each covers.

This conference background report was prepared by Casey Vander Ploeg, Director of Governance Studies at the Canada West Foundation, for the Organizing Committee of Pioneers 2000, a national conference on immigration. Because of the independence given the author in preparing this report, the opinions and recommendations expressed within are those of the author only, and do not necessarily reflect the opinions of the conference Organizing Committee, the hosting organizations and their members and donors, or the sponsors of the conference. Permission is hereby given by the copyright owner for any and all reproduction of this document in its entirety for educational and non-profit purposes.

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1. The "Limited" Agreement

The two agreements signed with New Brunswick and Newfoundland in 1999 can be classified as "limited" agreements. While these two agreements do contain some provisions on information sharing, joint research and cooperation, both are essentially limited to the operational details of naming "provincial nominees." The New Brunswick and Newfoundland agreements are virtually identical, and exclude several provisions found in the other four agreements such as maintaining program integrity, consulting with Ottawa on national immigration plans, and deterring abuse of immigration programs. There is no mention of settlement programs, refugees, or family reunification applicants.

2. The "Expanded" Agreement

The immigration agreements of British Columbia, Saskatchewan, and Manitoba are more comprehensive than the agreements signed with either of the two Atlantic provinces. While both sets contain clauses for the provinces to nominate a limited number of immigrants, the western agreements include additional provisions. For example, each includes a clause that commits Ottawa to seeking the advice of the province when developing immigration plans and setting annual levels. They also contain provisions for deterring abuse of immigration programs and reaffirming provincial support for the national refugee policy and family class sponsorship. Most importantly, each of these agreements broaches the topic of settlement services. In the Manitoba and British Columbia agreements, the federal government consents to hand over all responsibility for immigrant settlement programs. In the case of Saskatchewan, the federal government retains a clear role, but has agreed to coordinate its activities with those of the Saskatchewan government. The BC agreement also allows the province to play an increased role in recruiting potential business and investor immigrants.

3. The Quebec Agreement

The *Canada-Quebec Accord* stands out among all other intergovernmental immigration agreements simply because it provides that province with a much larger role in immigration than any of the other provinces. Like British Columbia and Manitoba, the agreement gives Quebec sole responsibility for settlement services, but the agreement goes further. For example, instead of simply selecting a limited number of provincial nominees, the Quebec agreement allows that province to devise its own selection criteria and thereby accept or reject "independent" and "refugee" immigrants who do not meet those criteria. The province also has a larger role to play with respect to "family reunification" class immigrants.

SIX AGREEMENTS: The Details

1. Provincial Consultation

With the exception of the New Brunswick and Newfoundland agreements, each of the documents stipulates specific areas where the federal government must consult with the provinces. Examples include consultation on the development and implementation of new federal immigration policies and the setting of annual levels of immigration to Canada. The basic intent is to foster an effective and workable partnership between the federal government and the provinces concerned on all aspects of the immigration process.

1) **Ottawa is expected to consider the advice of the provinces in setting the annual level of immigration into Canada.** As such, each province is expected to provide the federal government with the number of immigrants that it wishes to receive. This number is left open in the BC and Saskatchewan agreements, but both the Manitoba and Quebec documents set a minimum. Manitoba is to receive a proportional share of Canada's total immigrants based on the province's share of the national population. It is also to receive a proportional share of the "business class" and "skilled immigrants" in the independent class. The same rule applies for Quebec, but the agreement has the added proviso that Quebec can exceed its share by five percent for specific demographic reasons.

2) **The western and Quebec agreements specify that Ottawa must consult with the provinces before embarking on changes in immigration policy.** In turn, these provinces have agreed to consult with Ottawa

before making significant changes in any of their immigration policies and practices that might impact on national objectives. The wording is repeated virtually word for word in the western and Quebec agreements. The Saskatchewan agreement states that:

"Canada and Saskatchewan shall provide reasonable advance notice and opportunity for discussion when either party is contemplating a policy, program, or legislative change in relation to immigration policy which could have a material effect, financial or otherwise, on the other."

3) Ottawa must consult with the provinces before entering into any agreements for immigration related activities with other third parties. In carrying out immigration activities such as settlement or recruitment, it is sometimes advantageous to delegate authority to other third parties. The agreements stipulate that Ottawa must consult the provinces before entering into a partnership with any third parties under provincial jurisdiction. Again, the wording is almost identical across agreements. The BC agreement states:

"Canada shall consult with British Columbia before entering into any immigration related information sharing and research arrangements or formal negotiations with municipalities and third parties under provincial jurisdiction such as school boards, licensing bodies, quasi-governmental organizations and provincial crown corporations, settlement agencies, and immigrant serving agencies."

2. Cooperation

The preamble to most of the immigration agreements states that the intent is to create a new federal-provincial "partnership" by actively cooperating in key areas of immigration policy and practice. All six agreements therefore outline specific areas where cooperation should take place. In general, areas earmarked for cooperation can be grouped in five distinct categories, and include the sharing of information and research, reporting to each other on new developments, maintaining program integrity, working together to implement the agreements, and cooperating in the various steps of the immigration process.

1) All of the agreements provide for the sharing of information, data, and research between governments. This information exchange is intended to serve several purposes, including the sharing of ideas for new policies and programs, keeping each government abreast of recent developments and activities, and cooperating on research initiatives to avoid a duplication of efforts. While the exact wording varies between agreements, most are quite similar to the provision in the Manitoba document which states:

"In the interest of immigration policy development, program design and evaluation, program delivery and integrity, reducing overlap and avoiding duplication, Canada and Manitoba agree to cooperate by exchanging data and conducting research."

2) All of the agreements outline various processes for mutual reporting. Under the agreements, the provinces are required to report to Ottawa on certain aspects of their immigration activities. Specific items mentioned include reporting on the types of immigrants they are recruiting and the source countries on which they are focusing. Some of the provinces are also required to annually evaluate their programs and issue reports on their effectiveness.

3) The western agreements state that Ottawa and the provinces will work at maintaining program integrity. The thrust of this objective is to ensure that governments are working together to prevent the abuse of immigration programs. Specific mention is made that governments will cooperate to ensure that their programs are being used only by those for whom they are intended. As such, the agreements require that both governments cooperate in investigating program abuse, enlisting the cooperation of other agencies in addressing issues of criminality and public safety, coordinating and streamlining enforcement, and even the sharing of each others' services and facilities.

4) Every agreement establishes a joint committee to implement the agreement. The specific responsibilities of implementing the agreements are delegated to special joint commissions comprised of federal immigration officials and various provincial government appointees. The joint committees are given a wide range of responsibilities, including the settling of future disputes,

developing new policies and programs, conducting research, ensuring that information is shared between governments, evaluating immigration programs, consulting with the public, and identifying further areas of cooperation and consultation between governments.

5) **Finally, it is clear from the agreements that Ottawa and the provinces will now cooperate more closely on many of the seven steps in the immigration process.** Traditionally, immigration has been thought of as encompassing seven specific and separate steps. Each of the steps is listed and briefly discussed in ***Box 1.*** Every agreement provides for increased provincial input on promotion activities, recruitment, selection, admission, settlement, control, and evaluation. The intent of this cooperation is to better enable immigration to meet each province's unique social, demographic, and economic needs.

BOX 1: The Steps of Immigration

1) ***Promotion:*** *Government efforts to promote Canada as a place of opportunity for immigrants, and to inform them on the key features of Canada's economy and culture.*

2) ***Recruitment:*** *Activities of government to attract specific types of potential immigrants, especially those with certain skills and talents needed in Canada.*

3) ***Selection:*** *The criteria and process by which immigrants are assessed and selected to apply for formal admission based on their suitability and potential to contribute to Canada. Selection criteria change from time to time depending on circumstances such as labour market needs.*

4) ***Admission:*** *The Immigration Act contains a list of criteria that separates "admissible" from "non-admissible" applicants. For example, applicants are screened for criminal records and medical conditions before they can be admitted. These criteria are formally entrenched in statute and do not change frequently. While applicants may be "selected" they may not necessarily be "admitted."*

5) ***Settlement:*** *Governments and non-profit community groups provide numerous services and programs to help immigrants adjust to life in Canada. Examples of settlement programs include language training and referral services.*

6) ***Control:*** *This step involves enforcing immigration legislation and ensuring that programs are not being abused. For example, governments work to ensure that sponsors fulfill their obligations.*

7) ***Evaluation:*** *An ongoing process where immigration policy and programs are monitored to ensure that the governments' objectives are being met and programs are working properly.*

3. Clarification and Collaboration

The three western agreements and the Quebec Accord seek to clarify the commitment of the provinces and Ottawa to some of the basic fundamentals of Canada's immigration policy, particularly the role played by the various "classes" of immigrants such as family reunification applicants and refugees. The various immigrant classes and their essential features are outlined in ***Box 2 on page 5.*** In addition, the agreements compel both levels of government to collaborate by ensuring that immigrant programs are not abused.

1) **The western and Quebec agreements include clauses that clarify and strengthen provincial commitment to the importance of family class applicants.** In some agreements, this support is stated directly (as in the case of Manitoba), while in others it is merely implied through outlining certain processes to be employed in the selection and admission of family class applicants (BC, Saskatchewan, and Quebec). The federal government believes that the support of family helps tremendously in ensuring that immigrants will be successful in Canada, and thus has traditionally attached priority for those applicants seeking to reunite with close family members. The wording in the Manitoba agreement is instructive:

> *"Canada shall consult Manitoba on the development and implementation of policies which will encourage reunification of family from abroad, and Manitoba will undertake to participate in the development and implementation of those policies and programs..."*

In the case of the British Columbia, Saskatchewan, and Quebec agreements, the wording is more vague and the commitment is implied rather than stated. For example, Saskatchewan is simply promised consultation on the development and implementation of policies in support of family reunification. In British Columbia, the emphasis is placed on ensuring that family sponsorship obligations are being carried out. In the Quebec agreement, the federal government and the province have agreed on the process by which family reunification applicants are to be admitted – Canada retains sole responsibility for establishing the selection criteria while Quebec is responsible for applying those criteria.

BOX 2: Three Classes of Immigrants

People seeking to immigrate to Canada must do so under one of three "classes" of immigrants:

1) ***Family Class:*** *Individuals in this class apply for entry because they have close family members already living in Canada. Eligible applicants can include wives, husbands, fiancé(e)s, parents, grandparents, brothers, sisters, nephews, nieces, grandchildren, and dependent sons or daughters. Family class applicants are not screened for economic potential through the points system. They must, however, be sponsored by a family member for a period of 10 years, during which time they cannot apply for social assistance.*

2) ***Refugees:*** *These are persons seeking protection in Canada. There are two types of refugees: UN Convention refugees and others in refugee-like situations. Refugees are persons with a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group. Refugees also bypass the points system. Government typically covers the costs and responsibility for settling refugees, although they can also be sponsored by private individuals and organizations.*

3) ***Independents:*** *These individuals apply for permanent residence in Canada on their own initiative, and are selected through the points system which assesses their specific skills, talents, and economic potential. The class is further broken down into several components such as skilled workers, business entrepreneurs, investors, and self-employed persons.*

2) **The western agreements and the Quebec Accord clarify support for Canada's humanitarian goals with respect to refugees.** Essentially, the agreements stipulate that each province supports the inclusion of refugees in Canada's immigration program, and that they will agree to receive refugees. For example, the Saskatchewan agreement states that:

> *"Saskatchewan supports Canada's commitment to immigration based on humanitarian considerations and undertakes to receive its proportional share of refugees and members of designated classes in Saskatchewan including special needs refugees."*

While the intent of the agreements with regards to refugees is quite similar, the wording and details differ. Saskatchewan, for example, has agreed to accept a "proportional" share of refugees, but the federal government must also now consider Saskatchewan's desire for a "balance" in its intake of refugees in relation to other immigrant categories. The Manitoba agreement does not specify that the province must receive a "proportional" share of refugees. Rather, the federal government, in assigning a share to Manitoba, uses the actual number of refugees settled in the province in 1995 as a baseline, and the numbers increase from there as the province's proportional share of total immigrants gradually increases. Again, the federal government must also take into account the possible impact from the settlement of refugees in Manitoba. In British Columbia, the agreement states that the province should plan for the settlement and integration of a number of refugees, but the number of refugees received by BC should not exceed BC's percentage share of total immigration. In Quebec, the agreement specifies that all refugees must pass a set of selection criteria created by that province.

3) **Some of the agreements also provide for clarification of the rules governing "special" immigrants.** For example, the Saskatchewan agreement states that Canada will take into account the opinion of the province whenever it issues a "Minister's Permit" to an individual who is technically "inadmissible" under statute. The western agreements and the Quebec Accord also state that the provinces and Ottawa will work to establish procedures and consult each other with respect to visitors and foreign individuals entering the provinces to receive medical treatment.

4) **All of the agreements contain references to ensuring that the provinces respect the basic intent of the independent class of immigrants.** Under the agreements, the provinces are allowed to recruit and select a certain number of "provincial" nominees (except Quebec, which has much wider recruitment and selection powers). Each of the provinces has agreed that this nomination process will not be used in such a way as to circumvent the "independent" class of immigrants, especially the investor and business components. In this fashion, the federal government and the provinces have essentially agreed to the basic intent and purpose behind the points system and the processes used to screen the great bulk of skilled immigrants entering the country.

5) Each of the western agreements provides for at least a modicum of federal-provincial collaboration in preventing the abuse of immigration programs. Each government has committed to sharing resources and working to prevent the abuse of various immigration programs, particularly ensuring that those who sponsor family class immigrants carry out their obligations. The Manitoba agreement simply states that the province will "participate in the development and implementation of those policies and programs which strengthen and enforce sponsorship provisions and obligations." The Saskatchewan agreement includes more detail, stating that "Canada and Saskatchewan will work together to ensure that federal and provincial programs, as they relate to immigrants and non-immigrants, are designed and managed to deter abuse..."

The BC agreement contains the most comprehensive section on this matter, and dedicates an entire appendix to the issue. Ottawa will provide sponsorship information to the province, and the province will notify Ottawa when a sponsored immigrant is receiving government benefits. If that happens, Ottawa will ensure that no subsequent applications for sponsorship will be allowed from that sponsor until BC has confirmed that the benefit payments have been repaid.

4. Roles and Responsibilities

A key objective of each interprovincial agreement is to more clearly delineate the roles of the federal and the provincial governments when it comes to developing policy and carrying out the seven separate steps of the immigration process. The primary intent behind this realignment of roles and responsibilities is to minimize costs, increase the effectiveness of immigration programs, and reduce unnecessary overlap and the duplication of services.

1) All of the agreements stipulate the key areas where Canada is to take the lead role. The Canadian government maintains sole responsibility for determining the national framework for the immigration program, including its objectives, principles, and policies. As such, Ottawa will continue to set the annual level of immigration into the country, although it will consult with the provinces on this issue. The federal government will also continue to define the classes of immigrants, and maintains the sole responsibility for the formal admission of all immigrants to Canada by implementing the statutory requirements in the Immigration Act which screen applicants for such things as their medical condition and issues related to criminality and security. As such, only the federal government can issue immigrant visas. Canada also retains the right to determine the conditions for granting citizenship and for ensuring the fulfillment of Canada's obligations with respect to refugees. Canada will continue to take responsibility for the settlement of refugees, including covering the financial costs.

2) The agreements outline a limited number of areas where the provinces will assume primary responsibility. The agreements have ushered in a new era with respect to settlement and integration services for family class and independent immigrants. The BC, Manitoba, and Quebec agreements give those provinces sole responsibility for designing and delivering settlement services to these individuals. As part of this realignment, the federal government will entirely vacate the field and turn over to the provinces the financial resources it has used to provide integration services in the past. For example, British Columbia will receive $46 million per year for each of fiscal 1998/99 and 1999/00; Manitoba will receive $3.6 million per year over the same time period. Quebec received $75 million in 1991/92, which gradually increased to $90 million for 1994/95. After these transitional years have passed, the funding will be based on a formula that takes into consideration the number of immigrants landing in each province.

3) All of the agreements highlight several areas where jurisdiction and responsibility will be shared. First, in some provinces, both governments continue to be involved in settlement services (Saskatchewan, New Brunswick, and Newfoundland). Secondly, all of the agreements contain provisions which allow both levels of government to share promotion, recruitment, selection, control, and evaluation activities. The degree to which the various provinces are involved in these activities does differ, however. The Quebec agreement allows that province to promote and recruit a wide range of immigrants. Under the agreement, Quebec is allowed to set its own selection criteria for all independent class

immigrants and refugees. In other words, Canada must admit to Quebec any immigrant in these classes that meets Quebec's separate selection criteria regardless of how they stack up against federal criteria such as the "points" system. As long as the applicant to Quebec is not inadmissable under the Immigration Act and the immigrant meets Quebec's standards, Ottawa must admit the immigrant. Ottawa continues to set the criteria for the selection of family class immigrants, but those criteria are applied by Quebec.

As a result of the agreements, the other provinces can also engage in promotion, recruitment and selection, albeit in a more limited fashion than Quebec. The agreements allow BC, Saskatchewan, Manitoba, New Brunswick, and Newfoundland to promote their province and actively recruit and select a limited number of independent class immigrants called "provincial nominees."

5. The Provincial Nominees

With the exception of the Quebec Accord, all agreements include provisions for a "pilot" program which would allow the provinces to promote, recruit, and select a limited number of independent immigrants or "provincial" nominees. The agreements state that the federal government must work with the provinces to help them promote their respective regions in foreign immigration offices and notify them of opportunities to recruit potential immigrants. Staff in Canada's foreign immigration offices are responsible for liaising with the provinces.

In turn, the provincial governments have now devised their own special set of selection criteria and then nominate immigrants for admission to Canada based on those criteria. If it can be shown that these immigrants will help solve specific labour or skill shortages, or will be of significant economic or demographic advantage to the province, the nominees can bypass the federal government's selection criteria for independent applicants. If the immigrants are not deemed "inadmissable" under the Immigration Act, then the federal government is obliged to admit them to the province which recruited them. ***Figure 1*** shows some of the general characteristics of the various provincial nominee pilot programs.

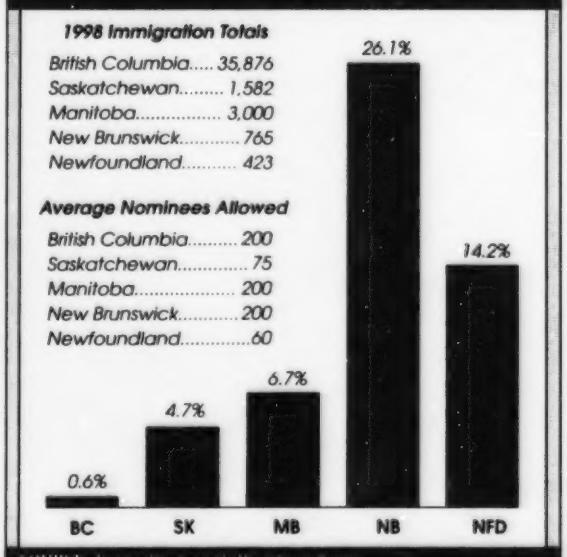
FIGURE 1: Provincial Nominee Pilot Programs

	BC	SK	MB	NB	NFD
Date of Signing	May 19/98	Mar 16/98	Jun 29/98	Feb 22/99	Sep 1/99
Length of program	5 years	2 years	4 years	5 years	5 years
Total nominees allowed	1,000	150	800	1,000	300
Yearly average or maximum	200	75	200	200	60
Opportunity to Exceed Max	YES	YES	YES	YES	YES

SOURCE: Derived by Canada West Foundation

Over two years, Saskatchewan can select a total of 150 nominees, while Manitoba can select 800 over a four year period. All other pilot programs will last for five years and allow from 300 nominees in Newfoundland to 1,000 in British Columbia and New Brunswick. Because the numbers of provincial nominees vary, it is clear that the program will also have different effects on each province ***(see Figure 2)***.

FIGURE 2: Provincial Nominees
(as a % of Provincial 1998 Immigrant Inflows)



SOURCE: Derived by Canada West Foundation

The provincial nominee program will arguably have the biggest impact in the province of New Brunswick. Under the agreement, New Brunswick will be allowed to nominate a maximum of 200 provincial nominees a year. This amount represents over 25% of that province's immigrant inflow for 1998. While Newfoundland can only select 60 provincial nominees a year (on average) over the course of its nominee program, this amount represents about 14% of that province's 1998 immigrant inflow. Arguably, the program means less for British Columbia, where the allowable maximum represents only slightly more than half of one percent of that province's immigrant inflow in 1998.

Also worth noting at this point is a set of special arrangements for provincial nominees that was negotiated between Ottawa and British Columbia. The BC agreement gives that province the opportunity to more aggressively pursue business and investor immigrants through two unique programs to be operated at the provincial level. First, the agreement allows the province to bring potential business immigrants to the province by arranging for exploratory visits. During these visits, the potential immigrants will attend special business orientation seminars that will highlight business opportunities and other potential investments. Secondly, the province will conduct special seminars for business and investor immigrants who have already been admitted as provincial nominees. As a condition of their entry, investment immigrants are required to fulfill certai conditions, such as creating a new business within two years of arrival and employing at least one other person. Failure to satisfy the conditions can result in the deportation of the immigrant. The purpose of the seminars is to help business and investor immigrants meet the conditions of their arrival.

Clearly, the provincial nominee pilot programs are one of the more substantial undertakings in the recent immigration agreements. While they are more limited than the provisions in the Quebec Accord, they do provide an inroad for the provinces to address their own unique social, economic, and demographic concerns. Ottawa and the provinces will continue to review the operations of these pilot programs, and depending on their success, the federal government may in the future create another permanent class of immigrant – the provincial nominee.

CONCLUSIONS

The agreements negotiated by Ottawa and six of Canada's provinces have changed certain immigration practices and they do have the potential to impact future immigration policy.

1) **The agreements clearly impact how immigration is practiced in the short term.** While the effects will differ from province to province, it is evident that a new era of cooperation has entered onto the immigration policy agenda. Governments will consult each other on new policy directions and will cooperate in numerous ways. The agreements are a first step in ensuring that immigration benefits both Canada and its provinces.

2) **The degree to which the agreements will impact the long-term future of immigration policy is unclear, but there are positive signals.** If the provincial nominee pilot programs are successful and the joint committees carry out their duties in coordinating federal and provincial immigration activities, the agreements may be the launching pad for an even more cooperative approach in the future. The prospect of a long-term and permanent class of "provincial nominees" arguably presents the biggest change in immigration policy in decades.

3) **Efforts to realign federal and provincial roles and responsibilities is a constructive way to limit disputes and ensure that both levels of government are on board with the current direction in immigration policy.** By clearly outlining the responsibilities of both governments in the immigration process, the agreements may have succeeded in ensuring that immigration policy fits one of the 21st century "mantras" of public policy – improved service, reduced cost, and increased benefit. ■

SOURCES

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Canada-Quebec Accord Relating to Immigration and Temporary Admission of Aliens (1991)

Canada-New Brunswick Agreement on Provincial Nominees (1999)

Canada-Newfoundland and Labrador Agreement on Provincial Nominees (1999)